IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 12207 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GUJARAT SENIOR CITIZENS' FEDERATION

Versus

ASST. CHAIRTY COMMISSIONER

Appearance:

1. Special Civil Application No. 12207 of 2001

PARTY-IN-PERSON for Petitioner No. 1

DELETED for Respondent No. 1-2

MR AN SAIYED for Respondent No. 3

MR JITENDRA M PATEL for Respondent No. 4

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 18/12/2002

ORAL JUDGEMENT

What is challenged in this petition under Article 226 of the Constitution is the order dated 16.10.2001

passed by the Assistant Charity Commissioner, Baroda Region, Baroda & Assistant Registrar of Societies, Baroda in Public Trust Inquiry Application No. 107 of 1998 which is produced at Annexure "9" to the petition.

2. The present petition is filed by Gujarat Senior Citizens' Federation which claims that it had filed an application for registration under the Societies Registration Act, 1860 and that it was duly granted the registration by the then Assistant Charity Commissioner & Assistant Registrar of Societies, Baroda on 16.7.1999 pursuant to the application made on 19.5.1998. It is the case of the petitioner that the petitioner-federation was established in the year 1994 and that thereafter on 17.12.1995 the first general body meeting of the petitioner-federation was held and the resolution passed at the said meeting is produced at Annexure "4" to this petition and was also produced before the Assistant Charity Commissioner. It is submitted that on 16.7.1999, the petitioner-federation was registered as a society and another body with the name "Senior Citizen's Federation (Gujarat)" was also registered as a society on the same date i.e. 16.7.1999 pursuant to their application dated 22.5.1998.

3. The registration granted in favour of the petitioner-federation came to be challenged by respondent No. 3 herein-Mr Munshi in Appeal No. 8 of 1999. In that appeal, a grievance was made that although he had filed objections, he was not granted reasonable opportunity of being heard. It is the case of the petitioner that in order to see that the proceedings are not delayed on account of the technical objection, the petitioner-federation agreed to have that order dated 16.7.1999 set aside and to have the matter remanded as per the Joint Charity Commissioner's orders dated 3.8.2000 which is produced before this Court during the course of the hearing on 5.12.2002. Pursuant to the said order of remand, the Assistant Charity Commissioner heard the parties afresh and by the impugned order dated 16.10.2001 has rejected the petitioner's application for registration and has also passed an order for cancelling the registration granted earlier in favour of the petitioner-federation on 16.7.1999. Hence, the present petition.

4. It is submitted by Mr PK Desai, Executive Secretary of the petitioner-federation that the Assistant Charity Commissioner has gone beyond the scope of the provisions of the Societies Registration Act, 1860 and has not taken into account the relevant considerations.

The only requirements under the Societies Registration Act are that seven or more persons should form an association for a charitable purpose or for any purpose described in Section 20 of the Act by subscribing to a memorandum of association and filing the same with the Registrar forming themselves into a society under the Act. The memorandum of association is required to contain the name of the society, objects of the society and the names, address and occupations of the members of the governing body to whom the management of the affairs of the society is entrusted and that the copy of the rules and regulations of the society is also required to be filed with the memorandum of association. It is submitted that all that the applicant is required to do is to comply with the requirements of Sections 1, 2 and 3 of the Act and nothing further is required to be done by the applicant for getting registration under the Societies Registration Act.

It is further submitted that the Assistant Charity Commissioner had erroneously mentioned in the order that the application was filed for registration under the Bombay Public Trusts Act, 1950 and not under the Societies Registration Act, 1860, but, as a matter of fact, the petitioner had applied only for registration under the Societies Registration Act and that it is because the Assistant Charity Commissioner after granting the registration on 16.7.1999 had required the petitioner also to submit an application for registration under the Bombay Public Trusts Act also and, therefore, such an application was submitted, but the petitioner-federation is entitled to have its application considered under the Societies Registration Act irrespective of whether such application is made or granted under the Bombay Public Trusts Act.

It is further submitted that the Assistant Charity Commissioner has rejected the application mainly on the ground that the petitioner had not produced the proof of the first general body meeting of the society and that the petitioner cannot be registered as a federation, when its constitution provides for admitting individual members also.

It is also submitted that the so called charge on page 58 of the paper book pertains to non-convening the meeting during pendency of the proceedings before the Assistant Charity Commissioner because the dispute was pending before the Joint Charity Commissioner and the Joint Charity Commissioner had granted stay of the registration granted in favour of the petitioner on

16.7.1999.

5. On the other hand, Mr Jayraj Chauhan on behalf of Mr JM Patel, learned counsel for respondent No. 4 has vehemently opposed the petition and made the following submissions :-

(i) The petitioner has an alternative remedy of filing an appeal before the Joint Charity Commissioner.

(ii) The Assistant Charity Commissioner whose order is challenged is a necessary party but his name has been deleted and, therefore, the petition is bad for want of necessary parties.

(iii) The persons who were parties before the Assistant Charity Commissioner are not joined as parties here.

(iv) The petition involves disputed questions of fact.

(v) On merits, the Assistant Commissioner had rightly passed the orders.

The Court's attention is also invited to the fact that aggrieved by the registration granted in favour of the Senior Citizens' Association (Gujarat), the present petitioner has already filed Appeal No. 11 of 1999 before the Joint Charity Commissioner at Baroda and that the petitioner does have an equally efficacious alternative remedy available to it.

6. Having heard the learned counsel for the parties, it appears to the Court that the petition does raise serious controversy whether the Assistant Charity Commissioner has properly considered the material produced before him, whether the documents pertaining to the first general body meeting held on 17.12.1995 are properly considered by the Assistant Charity Commissioner, whether the provisions of Sections 1, 2 and 3 laying down the procedure for registration of a society under the Societies Registration Act are properly considered by the Assistant Charity Commissioner and whether the said provisions contemplate any general body meeting of the society being convened. It, therefore, appears to the Court that all these aspects are required to be properly looked into by the learned Joint Charity Commissioner who can also hold any further inquiry, if necessary. When Appeal No. 11 of 1999 filed by the present petitioner against the registration granted in

favour of Senior Citizens' Association (Gujarat) is already pending before the learned Joint Charity Commissioner, it appears to the Court that instead of requiring the petitioner to file a fresh appeal after this passage of time, it would be just and proper to return the papers of this petition to the petitioner for presentation as an appeal before the learned Joint Charity Commissioner, Baroda. The order under challenge was pronounced by the learned Assistant Charity Commissioner on 16.10.2001, the petitioner applied for a certified copy on 17.10.2001, the copy was ready for delivery on 22.10.2001 and the present petition was filed on 24.12.2001. Since the respondents have contended that the petitioner has an equally efficacious alternative remedy available to it and it is at their instance that the petitioner is being relegated to the Joint Charity Commissioner, in view of the decision of the Apex Court in Danda Rajeshwari vs. Bodavula Hanumayamma, (1996) 6 SCC 199, it would be just and proper to direct the learned Joint Charity Commissioner to entertain the papers of the present petition as an appeal filed before the learned Joint Charity Commissioner within the period of limitation and to hear and decide the same alongwith Appeal No. 11 of 1999, if the papers of this petition are presented in the Office of the learned Joint Charity Commissioner by 20th January, 2003 alongwith the memo of appeal.

7. The learned Joint Charity Commissioner shall hear and decide the appeal as expeditiously as possible and preferably within three months from the date of receipt of the writ of this Court or a certified copy of this judgment, whichever is earlier, after taking into consideration the observations made in this judgment.

The petition is accordingly disposed of in the aforesaid terms with no order as to costs.

(M.S. Shah, J.)

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